

**ST 07-10**

**Tax Type: Sales Tax**

**Issue: Exemption From Tax (Charitable or Other Exempt Types)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC WOMAN’S CLUB, INC.**

**Taxpayer**

**Docket No. 00-ST-0000**

**Request for Exemption Number**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.<sup>1</sup>

Synopsis:

The ABC Woman’s Club, Inc. (“taxpayer” or “Club”) applied to the Department of Revenue (“Department”) for an exemption identification number in order to purchase tangible personal property at retail free from the imposition of use and retailers’ occupation taxes. The Department denied the application, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer is organized exclusively for charitable purposes

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<sup>1</sup> The taxpayer was not represented by an attorney. Jim Doe and Jane Doe, who are members of the organization, appeared for the taxpayer.

under section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and section 2-5(11) of the Retailers' Occupation Tax Act (35 ILCS 120/2-5(11)). The Department contends that the taxpayer is not organized exclusively for charitable purposes because it is primarily an organization that benefits its members. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is a not-for-profit corporation that was incorporated in 1927. (Dept. Ex. #1; Taxpayer Ex. #2)
2. The taxpayer is affiliated with the General Federation of Women's Clubs ("GFWC"), the Illinois Federation of Women's Clubs and the Seventeenth District of Women's Clubs. (Taxpayer Ex. #2)
3. The taxpayer was organized in 1896 in Anywhere, Illinois, and its original goal was "to promote friendship and understanding and to bring a wholesome element of social life to Anywhere." (Taxpayer Ex. #1)
4. The organization's mission statement is as follows:

The General Federation of Women's Clubs is an international women's organization dedicated to community improvement by enhancing the lives of others through volunteer service. (Taxpayer Ex. #2)
5. The taxpayer's constitution and by-laws state its object as follows:

The object shall be to create an organized center of thought and action for the promotion of charitable, educational, literary, and social pursuits, and whatever relates to the best interest of the community. (Taxpayer Ex. #2, p. 21)
6. Members are classified as active or courtesy. Active membership requires annual payment of dues. Courtesy members include the wives of ministers and members

- of the press. The Club has not waived the fees for any other members. (Taxpayer Ex. #2, pp. 18, 21; Tr. pp. 16-17)
7. At the time of the hearing, the annual dues were \$27. A portion of the dues is paid to the federal and state affiliates. The Club has approximately 70 members. (Tr. pp. 15, 21)
  8. The constitution and by-laws state, “All members failing to pay dues by the first day of November shall be in arrears. If dues are not paid by March 1<sup>st</sup>, they shall be automatically dropped from the Club roll.” (Taxpayer Ex. #2, p. 26)
  9. The Club members meet once a month during the months of September through May. The members schedule a program at every meeting and usually have dessert and social time. (Tr. pp. 18-19)
  10. Some of the charitable organizations that the taxpayer supports are the following: Red Cross, Anywhere Public Library, music scholarship at Anywhere Jr. High School, speech scholarship at Anywhere High School, art scholarship for an art school, Anywhere Area Musical Society, Reading is Fundamental, Children’s Theatre, Isabella Candee Foundation, K-9 Companions, and Native American scholarship. (Taxpayer Ex. #2; Tr. pp. 19-20)
  11. The taxpayer has seven departments for study and participation: Arts, Education, Conservation, Home Life, International Affairs, Health, and Public Affairs. (Taxpayer Ex. #2, pp. 7-8)
  12. The taxpayer’s fourteen standing committees include the following: Budget & Finance, Veteran & Native American Affairs, Legislation, Membership Relations, Scrapbook, Social, Building Maintenance, Telephone, Yearbook, Building &

Grounds, House, Building Rental, Program, and Nominating. (Taxpayer Ex. #2, pp. 9-10)

13. The Policies for the Club include the following:

The Woman's Club Building is available to members for personal use for family reunions, anniversary and wedding receptions, Christmas gatherings, etc., for the donation of \$35; for sister clubs, the donation of \$40, for all non-members, the donation of \$50 per day. A \$5 key deposit is required from all renters. (Taxpayer Ex. #2, p. 18)

14. The GFWC owns the Woman's Club Building that the taxpayer uses in  
Anywhere. The taxpayer rents it out to earn money to support its projects. The  
building is old and requires much maintenance. (Tr. pp. 21-22, 32)

15. The taxpayer filed Form 990-EZ (Short Form Return of Organization Exempt  
from Income Tax) with the IRS for the tax year beginning May 1, 2005 and  
ending April 30, 2006. The form shows the following revenue and expenses:

Revenue:

Contributions, gifts, grants, and similar amounts	\$ 585
Program service revenue including gov't fees and contracts	4,371
Membership dues and assessments	1,976
Investment income	67
Other revenue (Building rent, refunds)	<u>3,716</u>
Total revenue	\$10,715

Expenses:

Occupancy, rent, utilities and maintenance	\$ 6,139
Printing, publications, postage, and shipping	72
GFWC dues	1,369
House supplies	102
Lawn care	1,023
Repair	50
Real estate taxes	1,232
Tax preparation	85
Fees	63

Building insurance	1,108
Pest control	60
Club books and meeting programs	225
Bank box rental	18
Charitable donations	<u>648</u>
Total expenses	\$12,194
Excess (deficit) for the year	\$(1,479)

(Dept. Ex. #1, pp. 14-17)

#### CONCLUSIONS OF LAW:

The Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 3-5(4) of the Act provides a list of tangible personal property that is exempt from the tax, and includes the following:

Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes \*\*\*. On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department. (35 ILCS 105/3-5(4))

Section 2-5(11) of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*) contains a similar provision. See 35 ILCS 120/2-5(11).

The Department’s initial tentative denial of the taxpayer’s claim for an exemption identification number is presumed to be correct, and the taxpayer has the burden of clearly and conclusively proving its entitlement to the exemption. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2<sup>nd</sup> Dist. 1995); Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the

Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim. *Id.* It is well-settled that tax exemption provisions are strictly construed and all doubts are resolved in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975).

In order to determine whether the taxpayer is organized and operated exclusively for charitable purposes, the following factors are considered: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the primary purpose of the organization, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968). These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2<sup>nd</sup> Dist. 1995).

The taxpayer in the present case has not met its burden of proving by clear and convincing evidence that it meets most of the guidelines in Methodist Old Peoples Home,

*supra*, and is organized and operated exclusively for charitable purposes. The Club may sponsor and support charitable organizations, but it was formed to promote friendship and enhance the social life of the community, which are not charitable goals. The Club does not derive most of its income from public or private charity; it derives its income mostly from program service revenue and building rent. To be a member of the organization, each person must pay annual dues, which have never been waived for anyone other than the designated courtesy members. The testimony indicated that if a member does not pay, she is not “kicked out” but she knows that she is no longer a member. (Tr. p. 16)

The evidence supports a finding that the taxpayer’s primary activity is not charitable because the Club members perform many other activities in addition to promoting charitable causes. The Club has seven departments and fourteen standing committees that cover a wide variety of areas including Home Life, Public Affairs, Legislation, Scrapbook, and Yearbook. The one activity that occurs on a regular basis is a meeting once a month to listen to scheduled programs and have social time. For the tax year ending April 30, 2006, the taxpayer’s expenses included only \$648 out of \$12,194 for charitable donations. Although the taxpayer’s activities include charitable giving, this is not the primary purpose of the organization; the Club primarily enhances the social life of its members while they perform philanthropic work.

Cases involving membership organizations support a finding that the taxpayer is not a charitable organization. In the case of Rotary International v. Paschen, 14 Ill. 2d 480 (1958), the Supreme Court found that the Rotary organization was not entitled to a

charitable property tax exemption.<sup>2</sup> The court stated that Rotary’s objective was “to encourage and foster the ideal of service as a basis of worthy enterprise,” and while its aims were commendable, they were not charitable. *Id.* at 488. The court also found that Rotary’s income was not derived from public or private charity because most of it was from per capita tax payments, registration fees, and interest. *Id.*

The same conclusion was reached in another case with similar facts, Kiwanis International v. Lorenz, 23 Ill. 2d 141 (1961). The Supreme Court noted that the Kiwanis clubs engaged in a variety of charitable, religious, and educational activities that included sponsoring Boy Scout and Girl Scout troops, sponsoring boys clubs, and conducting summer camps. The court found, however, that the Kiwanis clubs were formed by business and professional men “for exchanging experience, for fellowship, and to improve their leadership in the community.” *Id.* at 146. The court stated that while the purposes were laudable and many of the activities of the local clubs were charitable, Kiwanis had other important purposes: the social, professional, and business advancement of its members. *Id.* The court concluded by stating that Kiwanis, like Rotary, does philanthropic work of public value, but each organization contains an element of personal advantage to its members. *Id.*

For the same reasons, it cannot be concluded that the taxpayer in the present case is organized and operated exclusively for charitable purposes. The taxpayer’s mission is similar to Rotary’s objective of encouraging service, but the Supreme Court stated that this goal is not charitable. The taxpayer sponsors charitable causes in a manner similar to that of the Kiwanis clubs, but the Supreme Court found that the Kiwanis clubs had other

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<sup>2</sup> The factors that are considered in determining whether an organization is charitable for property tax exemption purposes are the same ones that are considered in determining whether an organization is charitable for retailers’ occupation tax and use tax exemptions purposes. See Wyndemere, *supra*.



purposes that included the social and professional advancement of its members. The taxpayer also has other purposes that include the social advancement of its members. The taxpayer's organization certainly engages in worthy pursuits, but its activities are not primarily charitable within the meaning of the Use Tax Act and Retailers' Occupation Tax Act.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's request for an exemption identification number be denied.

Linda Olivero  
Administrative Law Judge

Enter: July 5, 2007